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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,232	03/25/2004	Yael Vodovotz	22727/04211	6689

24024 7590 03/06/2007
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EXAMINER

WEIER, ANTHONY J

ART UNIT	PAPER NUMBER
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1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/06/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/809,232

Applicant(s)

VODOVOTZ ET AL.

Examiner

Anthony Weier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 1-15 and 30-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group II (claims 16-29) in the reply filed on 12/15/06 is acknowledged. The traversal is on the ground(s) that the search of all the inventions within class 426 and subclass 634 would not be a serious burden. This is not found persuasive because the search of each invention would extend well beyond searching a single class/subclass. Moreover, the searches for each invention are not commensurate with one another and would require different search strategies.

The requirement is still deemed proper and is therefore made FINAL.

Information Disclosure Statement

2. Some of the references submitted in the IDS filed 9/16/04 have not been considered (and have been crossed out) as same were not accompanied by the publication date for same as required under 37 CFR 1.98. In addition, one of the references "The Effect of Bread-Making on Isoflavone Content...." (Zhang et al) appears to be incomplete as the "Conclusions" section is missing or has been blocked out.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 16-18 and 24-26 are rejected under 35 U.S.C. 102(b) as being anticipated by any one of Pandjaitan et al, JP 1-258669, Obata et al, Ara et al (Journal

of the Japanese Society for Food Science and Technology article), Choi et al (Biotechnology Letters 24 article), and JP 11169127.

Pandjaitan et al (page 403) discloses a edible material comprising soy flour wherein isoflavones are changed into the aglycone form via beta-glucosidase. JP 1-258669 (e.g. Abstract), Ara et al (Abstract), Choi et al (page 2113), JP 11169127 (e.g. tofu; Abstract) and Obata et al (e.g. Abstract) also each disclose an edible material comprising soybeans wherein isoflavones are changed into the aglycone form via beta-glucosidase.

It is expected that the edible material of said references would possess beta-glucosidase with the particular hydrolyzing ability as called for in the instant claims due to the similarity in material with that employed in the instant invention.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pandjaitan et al, JP 1-258669, Obata et al, Ara et al (Journal of the Japanese Society for Food Science and Technology article), Choi et al (Biotechnology Letters 24 article), and JP 11169127.

Pandjaitan et al is silent regarding the amount of soy protein present in each serving. However, it would have been obvious to one having ordinary skill in the art at

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the time of the invention to have modified the size of serving and relative amount of soy protein therein as a matter of preference.

6. Claims 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Pandjaitan et al, JP 1-258669, Obata et al, Ara et al (Journal of the Japanese Society for Food Science and Technology article), Choi et al (Biotechnology Letters 24 article), and JP 11169127 taken together with Kosuna et al.

The references do not appear to comprise any almond. However, such is a well known source of beta-glucosidase as taught, for example, by Kosuna et al (e.g. paragraph 58) and it would have been obvious to have employed beta-glucosidase via almond as a matter of convenience (rather than extracting same). It would have been further obvious to have arrived at the amount of almond in the edible material as a matter of preference depending on, for example, the degree of beta-glucosidase activity desired in the product.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Anthony Weier
Primary Examiner
Art Unit 1761

Anthony Weier
February 27, 2007

A handwritten signature in black ink, followed by the date "2/27/07" written vertically.